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ALEXANDER L. STEVAS

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No. _____

IN THE

Supreme Court of the United States

October Term, 1983

ROBERT J. LEWIS,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF PENNSYLVANIA.

PETITION FOR WRIT OF CERTIORARI

P. ANDREW DIAMOND

Attorney for Petitioner

1040 Fifth Avenue

Pittsburgh, Pennsylvania 15219

(412) 281-4689

Question Presented

Is the payment of fines and costs in March, 1980, for summary violations which occurred in June and July of 1976, and which are induced by the Director of the Department of Transportation's written notification to an operator's counsel that after the operator submits paid receipts to the Department "we will then be in the position to restore his operating privileges", such an impropriety as to violate due process under the Fourteenth Amendment, when subsequent license suspension proceedings are based upon the Department's treatment of the March, 1980 payment of the fines and costs as "convictions" under the Motor Vehicle Code, which permit points and a suspension to be imposed more than two years after the "commission of the offense", contrary to the applicable limitations of actions contained in Statute (42 Pa. C.S.A., §5553).

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IN THE

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No. _____

ROBERT J. LEWIS,

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COMMONWEALTH OF PENNSYLVANIA,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF PENNSYLVANIA.

PETITION FOR WRIT OF CERTIORARI

Opinions Below

The Order of the Supreme Court of Pennsylvania, entered October 4, 1983, at Proceedings No. 141 W. D. Allocatur Docket, 1983, is printed in the Appendix hereto, *infra*, page 1a. The Judgment and Opinion of the Commonwealth Court of Pennsylvania, entered April 27, 1983, at Proceedings No. 457 C.D., 1981, is printed in the Appendix, hereto, *infra*, pgs. 2a-6a. The Opinion and

Judgment of the Trial Court, the Court of Common Pleas of Allegheny County, Pennsylvania, entered February 3, 1981, at Proceedings No. S. A. 985 of 1980, is printed in the Appendix, *infra*, pages 7a-9a. Notice of Suspension issued by the Commonwealth of Pennsylvania, dated August 28, 1980, is printed in the Appendix, *infra*, page 10a-11a.

Jurisdiction

The Judgment of the Supreme Court of Pennsylvania at Proceedings No. 141 W. D. Allocatur Docket, 1983 (Appendix, *infra*, page 1a) was entered on October 4, 1983. Jurisdiction to the Supreme Court of the United States is invoked under 28 U.S.C., §1257(3).

Constitutions and Statutes Involved

This case involved Section I of the Fourteenth Amendment of the Constitution of the United States. This section reads as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, *without due process of law*; nor deny to any person within its jurisdiction the equal protection of the laws."

In addition, the interpretation of three statutory provisions of the Laws of the Commonwealth of Pennsylvania are involved in the instant case; 75 P.S., §1533; 42 Pa.C.S.A., §5553; and Act, 1976, June 17, P. L. 162, No. 81: (The three Statutes are stated in their entirety in the Appendix hereto, *infra*, pages 16a-18a).

Statement of the Case

On March 7, 1980, in answer to Petitioner Lewis' attorney's inquiry concerning license application, the Department of Transportation Director answered* as follows:

"Dear Mr. Lewis:

Your letter of recent date has been referred to me since the subject of your inquiry is an area of my responsibility.

Please be informed Mr. Lewis's operating privileges are currently suspended as a result of his failure to respond to the five (5) enclosed citations.

It will be necessary that he contact the magistrates and court mentioned on the reports concerning payment of fines and costs.

After he submits copies of the paid receipts to this office, we will then be in the position to restore his operating privileges.

Very truly yours,

Robert P. Spena, M.S.W.
Director
Bureau of Traffic Safety
Operations"

* The letter is reproduced in its entirety in the Appendix hereto, *infra*, page 12a.

The five enclosed Citations were for routine traffic violations occurring on these dates:

- One (1) on June 22, 1975,
- One (1) on June 22, 1976,
- One (1) on July 17, 1976,
- One (1) on July 25, 1976, and
- One (1) on April 24, 1979 in Florida.

Two of the summary convictions ante-dated a point amnesty cut-off date of June 30, 1976, which was contained in the Motor Vehicle Code of 1976, and the remaining Pennsylvania violations were subject to the provisions of 42 Pa. C.S.A., §5553, which prohibits any proceeding or action taken pursuant to a summary offense under Title 75 (Motor Vehicle Code) subsequent to two years after the commission of the offense (Appendix hereto, *infra*, page 16a). In reliance upon the quoted letter, Petitioner Lewis' lawyer arranged payment of the fines and costs on all five violations, and on March 25, 1980 notified the Director that the Citations had been paid while enclosing letters and a Florida receipt to that effect.

On April 20, 1980, the Department issued Lewis a license.

On August 28, 1980, the Department sent Lewis the Official Notice, assessing points and imposing a 365 day suspension (Letter of August 28, 1980 reproduced in its entirety in the Appendix hereto, page 10a-11a).

The thirteen points charged to Lewis were assessed because of the one 1975 and three 1976 Pennsylvania violations and the Florida violation, the point count being totaled by penalizing Lewis five (5) points for "pleading guilty" by paying the fines for each offense in March, 1980, and the remaining eight points upon the

Bureau's receiving "notification of Appellant's conviction on the three guilty pleas" arising from the payment of the Pennsylvania Citations of July 17, 1976 and July 25, 1976, and payment of the fine levied by Florida.

As permitted under the Motor Vehicle Code, Petitioner timely lodged an appeal to the Common Pleas Court of Allegheny County, Pennsylvania, contesting the imposition of the points and suspension. By Opinion and Order entered February 3, 1981, this appeal was dismissed (Reproduced in Appendix hereto, *infra*, pages 7a-9a). Thereafter, Petitioner lodged an appeal to the Commonwealth Court of Pennsylvania. By Opinion and Order entered April 27, 1983, the previous Order of the Common Pleas Court was affirmed (Reproduced in Appendix hereto, *infra*, pages 2a-6a). On May 23, 1983, Petitioner petitioned the Supreme Court of Pennsylvania for permission to appeal. In the Petition the issue of Due Process under the Fourteenth Amendment of the United States Constitution was presented (Appendix hereto, *infra*, pages 13a-14a). Without comment on the merits, the Petition for Permission to Appeal was denied on October 4, 1983 (Appendix hereto, *infra*, page 1a). It is from this Order of the Supreme Court of Pennsylvania that the instant case is brought before this Honorable Court.

Reasons for Granting Writ

Although a driving license has been characterized as a privilege rather than a right, and its suspension, a civil instead of a criminal proceeding, it cannot be seriously questioned that it is subject to the Fourteenth Amendment whose second sentence of Section One provides:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law;"

The due process clause which ensures fundamental fairness in procedure, evolved from the creation of regulatory commissions and boards whose activities raised questions not only of essential propriety, but delegation of powers as well.

It is Petitioner's contention that the Transportation Department, albeit unintentionally, violated the fundamental tradition of due process when its Director in his letter of March 7, 1980, informed counsel for Petitioner Lewis that it:

"will be necessary to contact the magistrates and court mentioned on the reports (submitted with the letter) concerning payment of fines and costs".

"After he submits copies of the paid receipts to this office, we will be in the position to restore his operating privileges."

This letter and the five reports it included were presented to Petitioner's counsel for the payment of fines in order "to restore" Lewis' operating privileges.

Since two of the reports involved June, 1975 and June, 1976, Pennsylvania minor infractions, and two others, July, 1976 Pennsylvania minor infractions, while the fifth was for a fine imposed by the State of Florida, Petitioner's counsel was led to believe that the procedure described by the Department Director was dispositive of the matter and that the provisions of 42 Pa. C.S.A., §5553(e) (Appendix hereto, *infra*, page 16a) preventing any proceeding or action taken pursuant to a summary offense under Title 75 (Motor Vehicle Code) subsequent to two years after the commission of the offense, effectively terminated the Pennsylvania Traffic Violations of June, 1975, 1976 and July, 1976.

By no inference or suggestion in the March 7, 1980 letter of the Department Director, could Petitioner's counsel understand that the proposed action of the Department in the issuance of a license on April 20, 1980 for payment of June, 1975, June, 1976 and July, 1976 summary violations, was simply a prelude to the imposition of thirteen (13) points because of "guilty pleas" to offenses which were neither proven nor provable against him.

That this opinion was shared by the very magistrate whose citation on July 17, 1976 was used by the Department to reach its quota for the Official Notice on Page One (1), foregoing, is illustrated by the letter which she mailed to the Department on March 12, 1980. That letter reads as follows:

"Gentlemen:

Please be advised that Citation No. T-05-086069 issued 7/17/76 for Violation 1016B, was paid on 2/14/80 and receipted in the amount of \$35.00 on Receipt No. A027856 for the above mentioned person.

In view of the above, will you please restore his driving privileges and forward his application for renewal.

Thank you for your kind cooperation and usual prompt attention.

Sincerely,

Olive Stocker
District Justice"

It is submitted that the letter of the Department Director on March 7, 1980, is a violation of fundamental due process in that it induced the performance of an act (the payment of fines on stale and unprovable charges) which it later utilized to deprive the Petitioner of a privilege basic to his employment.

In addition to the impropriety implicit in the failure of the March 7, 1980 Department letter to present the consequences inherent in the action induced, and of the Department's undeclared intention to exercise the consequences in due course thereafter, as well as the two year limitation applicable to summary proceedings, the Petitioner alleges the Department has not conformed to fundamental due process in the point imposition of the subject suspension.

Of the five charges set forth in the Department Director's letter of March 7, 1980, the oldest (a left turn without a signal) occurred on June 22, 1975 and no points should have been assessed because of the amnesty

provisions in the Act of 1976, June 17, P.L. 162, No. 81 (Appendix hereto, *infra*, page 17a-18a).

The charge which precipitated the official notice of August 28, 1980, *i.e.*, a stop sign, July 17, 1976, was marked Exhibit 3 at the Common Pleas Session of December 18, 1980 before the Honorable Nicholas P. Papadakos, Jr., Page 7 of a total of 11 pages of discussion. That exhibit, as admitted by Commonwealth Deputy Attorney Giltenboth, showed the conviction occurred more than six months before it was sent to the Department by the magistrate. By the provisions of 75 P.S., §1535(c) (Appendix hereto, *infra*, page 17a) any points assigned after the six month period are null and void. These points, therefore, should have been eliminated.

It will be seen that procedural defects largely dissipate the underlying premise of the Department that Petitioner's record justifies the extreme measures taken to obtain a suspension herein. The fact is that Petitioner at no time had an evidentiary hearing where proof of summary violation was offered, that the violations charged to him occurred more than four years before official notice of suspension was given him, that said suspensions were based upon fines paid through his counsel who was induced to pay by Department advice that payment was necessary to secure Lewis his license, whereas in truth, the payments were cited by the Department to sustain his suspension, and where the record shows a non-conformity to the fundamentals of due process, which require the power of the state, exercised through its administrative agencies, to be expended in the liberation, not the oppression, of its constituents.

Believing the case to be one of first impression and invoking a matter of constitutional dimensions, the Petitioner prays this Honorable Court issue a Writ of Certiorari to review the proceedings of this case and after submission of same, decree the adjudication of the Department of Transportation of the Commonwealth of Pennsylvania, suspending Petitioner's driving privileges to be a nullity and remand the case under directive that Petitioner's driving privileges be restored.

Respectfully submitted,

JOSEPH I. LEWIS

Attorney for Petitioner

1a

APPENDIX

Order of the Supreme Court of Pennsylvania

THE SUPREME COURT OF PENNSYLVANIA

Western District

Carl Rice, Esq.

Prothonotary

Irma T. Gardner

Deputy Prothonotary

801 City-County Building

Pittsburgh, Pa.

15219

October 11, 1983

Joseph I. Lewis, Esquire

1040 Fifth Avenue Building

Pittsburgh, Pennsylvania 15219

In Re: ROBERT J. LEWIS, Petitioner v.

COMMONWEALTH OF PENNSYLVANIA

No. 141 W.D. Allocatur Docket 1983

Dear Mr. Lewis:

This is to advise you that your Petition for Allowance of Appeal filed in the above-captioned matter was denied by the Court on October 4, 1983.

Very truly yours,

CARL RICE

CARL RICE, Esq.

CR/ss

cc: Commonwealth of Pennsylvania,

Dept. of Transportation

Honorable Nicholas P. Papadakos

Opinion and Order of the Commonwealth
Court of Pennsylvania

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

No. 457 C.D. 1981

ROBERT JAMES LEWIS,

Appellant,

vs.

COMMONWEALTH OF PENNSYLVANIA,

Appellee.

BEFORE:

HONORABLE JAMES CRUMLISH, JR.,

President Judge

HONORABLE ROBERT W. WILLIAMS, JR.,

Judge

HONORABLE ALEXANDER F. BARBIERI,

Judge

SUBMITTED ON BRIEFS: March 3, 1983

OPINION BY JUDGE BARBIERI Filed April 27, 1983

Robert J. Lewis (Appellant) appeals here from an order of the Court of Common Pleas of Allegheny County sustaining a suspension of his operator's license. We affirm.

On July 17, 1976, Appellant was issued a citation for failing to come to a complete stop at a stop sign. Appellant subsequently failed to respond to this citation,

*Appendix—Opinion and Order of the Commonwealth
Court of Pennsylvania.*

and upon receiving notice of this failure to respond, the Pennsylvania Department of Transportation, Bureau of Traffic Safety (Bureau) suspended Appellant's license pursuant to the mandate of Section 1533 of the Vehicle Code, 75 Pa. C.S. §1533, which reads in pertinent part as follows:

The department shall suspend the operating privilege of any person who has failed to respond to a citation to appear before a court of competent jurisdiction... for violation of this title... upon being clearly notified in accordance with general rules.... The suspension shall be for an indefinite period until such person shall respond and pay any fines and penalties imposed.

Subsequent to the receipt of his July 17, 1976 traffic citation, Appellant received four more citations for traffic offenses occurring in Pennsylvania and Florida. When Appellant also failed to respond to any of these citations, the Bureau, upon receiving notice of each failure to respond, imposed an additional current suspension bringing Appellant's total of suspensions to five. On or about May 24, 1980, Appellant finally responded to each of the five outstanding citations by pleading guilty and paying the fines for each offense. Upon receiving notice of Appellant's responses, the Bureau terminated the suspensions imposed pursuant to Section 1533 of the Vehicle Code, and added five points to Appellant's record pursuant to the mandate of Section 1545 of the Vehicle Code, 75 Pa. C.S. §1545. The Bureau then received notification of Appellant's conviction on three of the above guilty pleas for traffic offenses occurring on July 17, 1976, July 25, 1976 and January 18, 1980. Since these convictions added eight points to Appellant's record, bringing his total to thirteen, the

*Appendix—Opinion and Order of the Commonwealth
Court of Pennsylvania.*

Bureau resuspended Appellant's license as required under Section 1539 of the Vehicle Code, 75 Pa. C.S. §1539. This suspension was subsequently affirmed in an appeal to the court of common pleas, and the present appeal followed.

Before this Court, Appellant initially alleges that the Bureau is barred from suspending his license by the provisions of Section 5553(e) of the Judicial Code, 42 Pa. C.S. §5553(e), which provides in pertinent part that "[n]o proceedings shall be held or action taken pursuant to a summary offense under Title 75 subsequent to two years after the commission of the offense." We disagree.

Section 5553 of the Judicial Code, being a part of Subchapter C of that code, is only applicable to criminal proceedings, and thus, is not applicable to license suspension proceedings which, as we have repeatedly held, are civil in nature. *Department of Transportation, Bureau of Traffic Safety v. Grobes*, 45 Pa. Commonwealth Ct. 151, 405 A.2d 588 (1979); *Department of Transportation, Bureau of Traffic Safety v. Lea*, 34 Pa. Commonwealth Ct. 310, 384 A.2d 269 (1978); *Department of Transportation, Bureau of Traffic Safety v. Brown*, 31 Pa. Commonwealth Ct. 620, 377 A.2d 1027 (1977). Nor can Appellant attempt here to collaterally attack his conviction by alleging that it should have been barred by the statute of limitations found in Section 5553 of the Judicial Code. As we stated in *Lea*, "[a]s we view it, an appeal from suspension or revocation of an operator's license being civil in nature, a reviewing court may not consider any claimed procedural defects or errors in the criminal proceeding which formed the basis for the suspension or revocation." *Id.* at 313, 384 A.2d at 271. See also *Grobes*; *Martz v. Department of Transportation, Bureau of Traffic Safety*, 24 Pa. Commonwealth Ct. 26,

*Appendix—Opinion and Order of the Commonwealth
Court of Pennsylvania.*

354 A.2d 266 (1976); *Virnelson Motor Vehicle Operator License Case*, 212 Pa. Superior Ct. 359, 243 A.2d 464 (1968).

Finally, Appellant, citing *Department of Transportation, Bureau of Traffic Safety v. Passerella*, 42 Pa. Commonwealth Ct. 392, 401 A.2d 1 (1979) and *Department of Transportation, Bureau of Traffic Safety v. Hosek*, 3 Pa. Commonwealth Ct. 580, 284 A.2d 524 (1971), alleges that he was "prejudiced" by the long delay between the date of his offense and the date of his suspension, and argues that his license should therefore not be suspended. We fail to see the relevance of either *Passerella* or *Hosek* to the instant case, however, since both involved the interpretation of statutory language found in the old Vehicle Code,¹ but not present in the current Vehicle Code, which required the Bureau, upon receipt of notice of a conviction, to suspend or revoke an operator's license "forthwith." In the present case the Bureau promptly suspended Appellant's license upon receipt of notice of his convictions, and we fail to see how Appellant can allege that he was "prejudiced" by the long delay between the date of his offenses and the ultimate suspension of his license since that delay was caused by his own failure to respond to the traffic citations he received. Accordingly we will affirm.

ALEXANDER F. BARBIERI

Alexander F. Barbieri, Judge

FOOTNOTES

¹ Act of April 29, 1959, P.L. 58, as amended, formerly 75 P.S. §§101-2521, repealed by the Act of June 17, 1976, P.L. 162.

*Appendix—Opinion and Order of the Commonwealth
Court of Pennsylvania.*

ORDER

IN THE

COMMONWEALTH COURT OF PENNSYLVANIA

No. 457 C.D. 1981

ROBERT JAMES LEWIS,

Appellant,

vs.

COMMONWEALTH OF PENNSYLVANIA,

Appellee.

NOW, April 27, 1983 the order of the Court of
Common Pleas of Allegheny County docketed at No.
SA985 of 1980, and dated February 3, 1981, is affirmed.

ALEXANDER F. Barbieri
Alexander F. Barbieri, *Judge*

Certified from the Record
Apr 27, 1983
Francis C. Barbush
Chief Clerk

Opinion and Order of Court of Common Pleas
of Allegheny County, Pennsylvania

VI.

MEMORANDUM OPINION

PAPADAKOS, A. J.

February 3, 1981

This matter is before the Court on appeal from the Notice of Suspension of Appellant's operating privileges because of the accumulation of thirteen (13) points. Appellant questions the total number of points and claims that the amnesty provisions of the new Vehicle Code should have caused expungement of some points.

The amnesty date is June 17, 1976, date of enactment of the Vehicle Code. All points assigned to the record of a licensed person for violations occurring prior to June 17, 1976 must be deleted and may not be used as a basis for suspension of operating privileges. Subsections (b), (c), (d) and (e) of Section 2 of Act of 1976, June 17, P.L. 162, No. 81, effective July 1, 1977.

A review of Appellant's driver record maintained in the Bureau of Highway Safety (see Exhibit 25) shows that a total of eighteen (18) points were assessed for six separate violations committed by Appellant after June 17, 1976. Within six months of the conviction of each of said violations, the Department assessed the appropriate number of points.

The record also shows the removal of five points for appropriate reasons. Thus, the net accumulated total on August 28, 1980 was thirteen (13) points.

Appellant further complains that the assessment of three points on August 28, 1980 for a violation which occurred on July 17, 1976, a spread of more than 49 months, represents such an unreasonable delay as to constitute prejudice to Appellant upon which relief can

*Appendix—Opinion and Order of Court of Common Pleas
of Allegheny County, Pennsylvania.*

be granted. Mere passage of time between date of conviction and notice of suspension is insufficient by itself to set aside suspension. *Commonwealth v. Passerella*, 401 A. 2d 1, Cmwth. Ct., 1979.

The passage of more than four years, in itself, should be considered prejudicial to a licensed operator and the three points assessed should be stricken. The facts in this case do not support such a conclusion. Appellant was cited for failure to come to a complete stop at a stop sign on July 17, 1976 (Section 1016(b) of the former Code). Appellant had not responded to the citation by February 24, 1978 and official notification thereof was sent to the Department (Exhibit 21). By letter of March 28, 1978, the Department notified Appellant of the suspension of his operating privileges for failure to respond to the July 17, 1976 citation. Following Appellant's payment of the fine and costs, the Department timely assessed the points and assigned them to Appellant's record.

Appellant maintained during arguments at hearing that the issuing authority should have followed the procedure set up in Rule 54 of the Pennsylvania Rules of Criminal Procedure. He claims, on reflection, that an arrest warrant for failure to respond would have been more palatable to him and in keeping with his rights than the alternative method chosen by the District Justice of requesting the Department to suspend the operating privileges for failure to respond to a citation or pay a fine. The Court can find no error on the part of the District Justice which would be grounds for reversal of the Department's action.

Accordingly, an Order will be entered dismissing Appellant's appeal.

*Appendix—Opinion and Order of Court of Common Pleas
of Allegheny County, Pennsylvania.*

IN THE
COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

Civil Division
No. SA 985 1980
STATUTORY APPEALS DOCKET

COMMONWEALTH OF PENNSYLVANIA,
v.

ROBERT JAMES LEWIS.

ORDER OF COURT

AND NOW, this 3 day of Feb. 1981, the above Appeal having come on for hearing, upon consideration thereof, it is hereby ordered that the Appeal of the Defendant is Dismissed.

Defendant to pay _____ COSTS.

COPIES OF THIS ORDER SENT TO THE
PARTIES SHOWN ON THE OPINION FILED THIS
DATE.

BY THE COURT
PAPADAKOS, A. J.
J.

Eo Die, exception noted to _____

(Stamp Illegible)

Notice of Suspension

OFFICIAL NOTICE

(SEAL) Commonwealth of Pennsylvania
Department of Transportation
Bureau of Traffic Safety Operations
Harrisburg, Pa. 17123

Placed in the U.S. Mail
By _____

DATE AUG 28 1980

REFER TO O.R. 80-234
E. 365 DAYS

ROBERT JAMES LEWIS DATE OF BIRTH 02-05-40
3229 COMANCHE RD OPERATORS NO 10450628 01
PITTSBURGH PA 15241

—Inquiries about your record must contain all
of the information in this block—

AS A RESULT OF YOUR CONVICTION OF
VIOLATING SECTION 1016 B OF THE VEHICLE
CODE ON 07-17-76, 03 POINTS HAVE BEEN
ASSIGNED TO YOUR RECORD.

YOUR TOTAL POINT ACCUMULATION IS 13
POINTS.

SINCE YOUR POINT RECORD SHOWS AN
ACCUMULATION OF 13 POINTS, A SUSPENSION
OF 365 DAYS IS HEREBY IMPOSED AS
MANDATED BY SECTION 1539 OF THE VEHICLE
CODE.

Appendix—Notice of Suspension.

IN ORDER TO COMPLY WITH THIS SUSPENSION/REVOCATION, YOU ARE REQUIRED TO RETURN ANY CURRENT OPERATOR'S LICENSE OR LEARNER'S PERMIT IN YOUR POSSESSION. NO LATER THAN THE EFFECTIVE DATE LISTED BELOW.

A CHECK OR MONEY ORDER IN THE AMOUNT OF \$25.00 MUST BE SUBMITTED TOGETHER WITH THE ENCLOSED VOUCHER BEFORE YOUR OPERATING PRIVILEGE WILL BE RESTORED.

EFFECTIVE DATE 10/02/80 12:01 A.M.

Credit toward serving said suspension will begin when license is received by Bureau.

ROBERT C. SPENA
DIRECTOR
BUREAU OF TRAFFIC SAFETY OPERATIONS
DEPARTMENT OF TRANSPORTATION

You have a right to appeal to the Court of Common Pleas of the county of your residence within thirty (30) days of the date of this notice. If you appeal, your license will be reinstated pending a final decision by the Court.

NOTE: Address All Correspondence To:

Department of Transportation
Bureau of Traffic Safety Operations
Citation Processing Division, Room 302
Transportation and Safety Bldg.
Harrisburg, Pa. 17123
Telephone: (717) 783-3150

Letter Dated March 7, 1980

COMMONWEALTH OF PENNSYLVANIA
(SEAL) DEPARTMENT OF TRANSPORTATION
BUREAU OF TRAFFIC SAFETY
HARRISBURG
17123

IN YOUR REPLY PLEASE
REFER TO OR 324

RECEIVED
MAR 12, 1980

March 7, 1980

J. Kerrington Lewis, Attorney at Law
512 Frick Bldg.
Pittsburgh, PA 15219

Re: Robert James Lewis

Dear Mr. Lewis:

Your letter of recent date has been referred to me since the subject of your inquiry is an area of my responsibility.

Please be informed Mr. Lewis's operating privileges are currently suspended as a result of his failure to respond to the five (5) enclosed citations.

It will be necessary that he contact the magistrates and court mentioned on the reports concerning payment of fines and costs.

After he submits copies of the paid receipts to this office, we will then be in the position to restore his operating privileges.

Very truly yours,

ROBERT P. SPENA,
Robert P. Spena, M.S.W.
Director
Bureau of Traffic Safety Operations

Enclosure

Petition for Allowance to Appeal**II. QUESTIONS PRESENTED FOR REVIEW**

1. Is the payment of fines and costs in March, 1980, for summary violations which occurred in June and July of 1976, and which are induced by the Director of the Department of Transportation's written notification to an operator's counsel that after the operator submits paid receipts to the Department "we will then be in the position to restore his operating privileges", such an impropriety as to violate due process in a license suspension proceeding based upon the Department's treating the payment of the fines and costs as "convictions" under the Motor Vehicle Code?

2. Is the issuance of a license on April 20, 1980 by the Department of Transportation, to an operator who has paid fines and costs in March, 1980, for summary violations which occurred in June and July of 1976, and following the inducement to his lawyer set forth in question one, within the purview of the caveat set forth in 42 Pa. C.S.A. 5553, which prohibits any proceeding or action to be taken pursuant to a summary offense under Title 75, the Motor Vehicle Code, subsequent to two years after the commission of the offense?

* * *

*Appendix—Petition for Allowance to Appeal.**IV. STATEMENT OF REASONS RELIED UPON
ALLOWANCE OF APPEAL*

Although a driving license has been characterized as a privilege rather than a right, and its suspension, a civil instead of a criminal proceeding, it cannot be seriously questioned that it is subject to the 14th Amendment whose second sentence of Section One provides:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law;"

The due process clause which ensures fundamental fairness in procedure, evolved from the creation of regulatory commissions and boards whose activities raised questions not only of essential propriety, but delegation of powers as well.

It is Petitioner's contention that the Transportation Department, albeit unintentionally, violated the fundamental tradition of due process when its Director in his letter of March 7,

* * *

Statutes

§1539. Suspension of operating privilege on accumulation of points

(a) General rule.—When any person's record shows an accumulation of 11 points or more, the department shall suspend the operating privilege of the person as provided in subsection (b).

(b) Duration of suspension.—The first suspension shall be for a period of 5 days for each point, the second suspension shall be for a period of 10 days for each point, the third suspension shall be for a period of 15 days for each point and any subsequent suspension shall be for a period of one year.

(c) Determination of subsequent suspensions.—Every suspension and revocation under any provision of this subchapter shall be counted in determining whether a suspension is a second, third or subsequent suspension. Acceptance of Accelerative Rehabilitative Disposition¹ for an offense enumerated in section 1532 (relating to revocation or suspension of operating privilege) shall be considered a suspension in making such determination.

(d) Section not exclusive.—Suspension under this section is in addition to any suspension mandated under section 1535 (relating to schedule of convictions and points).

1976, June 17, P.L. 162, No. 81, §1, eff. July 1, 1977.

¹ Pa.R.Crim.P., Rules 175 to 185.

Appendix—Statutes.

§1533. Suspension of operating privilege for failure to respond to citation

The department shall suspend the operating privilege of any person who has failed to respond to a citation to appear before a court of competent jurisdiction of this Commonwealth or of any state for violation of this title, other than parking, upon being duly notified in accordance with the Pennsylvania Rules of Civil and Criminal Procedure. There shall be 15 days to respond to such notification before suspension is imposed. The suspension shall be for an indefinite period until such person shall respond and pay any fines and penalties imposed. Such suspension shall be in addition to the requirement of withholding renewal or reinstatement of a violator's driver's license as prescribed in section 1503(c) (relating to persons ineligible for licensing).

1976, June 17, P.L. 162, No. 81, §1, eff. July 1, 1977.

42 Pa.C.S.A. LIMITATION OF TIME §5553

(e) Disposition of proceedings within two years.—No proceedings shall be held or action taken pursuant to a summary offense under Title 75 subsequent to two years after the commission of the offense.

1978, April 28, P.L. 202, No. 53, §10(65), effective June 27, 1978. As amended 1980, Oct. 5, P.L. 693, No. 142, §501(a), effective in 60 days.

Appendix—Statutes.

75 P.S. §1535(c)

(c) No points after six months.—The department shall assign points to the record of any person within six months from the date of a conviction. Any points assigned after such six-month period shall be null and void.

1976, June 17, P.L. 162, No. 81, §1, eff. July 1, 1977.

Transition Provisions

Subsections (b), (c), (d) and (e) of section 2 of Act 1976, June 17, P.L. 162, No. 81, effective July 1, 1977, creating the new Title 75, Vehicles, of the Pennsylvania Consolidated Statutes, provide as follows:

“(b) Points.—All points assigned to the records of licensed persons under former section 619.1 of ‘The Vehicle Code’ shall be deleted from the records of the licensees and thereafter may not be used as a basis for suspension of operating privileges and no points shall be added to the records of any licensees on account of any violations committed prior to the effective date of the point system as set forth in section 8 of this act [June 17, 1976].

“(c) Return of suspended licenses.—The department shall return the licenses of all drivers who are serving suspensions under former sections 618(b)(2) or 619.1 of ‘The Vehicle Code.’ Such drivers shall not drive until they have received their licenses.

*Appendix—Statutes.**“(d) Purge of records.—*

“(1) All suspensions and convictions under former sections 618(b)(2) and 619.1 of ‘The Vehicle Code’ which occurred prior to July 1, 1973, shall be purged from the records of licensees on June 30, 1976.

“(2) All other suspensions and convictions under former sections 618(b)(2) and 619.1 of ‘The Vehicle Code’ shall be purged from the records of licensees on June 30, 1979.

“(3) No suspensions or convictions under former sections 618(b)(2) and 619.1 of ‘The Vehicle Code’ shall constitute prior suspensions for the purpose of determining the length of suspensions under 75 Pa.C.S. §1539 (relating to suspension of operating privilege on accumulation of points).

“(e) Implementing regulations.—Immediately upon the final enactment of this act, the Department of Transportation shall promulgate regulations to implement the provisions of 75 Pa.C.S. §§1535 (relating to schedule of convictions and points) through 1539 (relating to suspension of operating privilege on accumulation of points) (by assigning point as prescribed in 75 Pa.C.S. §1535(a) for similar violations occurring prior to the effective date of this act under the act of April 29, 1959 (P.L. 58, No. 32), known as ‘The Vehicle Code.’ [75 P.S. §101 et seq.]. The regulations may be promulgated without compliance with statutory requirements relating to notice of proposed rule making and public hearings, may be made effective immediately upon publication in the Pennsylvania Bulletin and may be made retroactive to the date of final enactment of this act.”